IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7978 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE KUNDAN SINGH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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MANIBHAI T. PATEL

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7978 of 1993

Mr. J.A.Adesari for MR AKIL KURESHI

for the Petitioner.

GOVERNMENT PLEADER for Respondent No. 1-absent.

CORAM : MR.JUSTICE KUNDAN SINGH

Date of decision: 20/07/2001

ORAL JUDGEMENT

By means of this petition, the petitioner has prayed for a direction to the State Government to re-fix the pension payable to the petitioner after adding the period of service rendered by him in Maharashtra

State from 1.5.1960 to 12.5.1968.

2. The contention of the learned counsel for the petitioner is that the petitioner was appointed as a teacher on 9.6.57. The petitioner joined as a primary school teacher with effect from 16.5.52 and worked from 16.5.52 to 25th March, 1954 in Jarola English school. Thereafter, the petitioner left that service from 25th March, 1954 for higher studies and re-started his service as a school teacher with effect from 9.6.57 and joined the service at R.C.M. Highschool, Poona in the then State of Bombay. R.C.M. Highschool was a grant-in-aid school. The petitioner continued to serve the school from 9.6.57 to 12.6.58. After bifurcation of the Bombay State, the State of Gujarat came into existence on 1.5.60. The petitioner joined D.B.Highschool, Bhadran in the Gujarat State and he continued to work there till 31st October, 1989 his retirement. His pension has been calculated and fixed qualifying the service period from 22.6.68 to 31.10.89, but the service rendered by the petitioner as teacher for the period from 1.5.60 to 12.5.68 has not been included and that service period is qualifying service as per the Government resolution. Therefore, he is entitled for adding that period as qualifying service for re-fixation of the pension.

2. The learned counsel for the petitioner pointed out from the Government resolution dated 2nd August, 1985 at Annexure "B" that for non-governmental secondary schools, pension scheme (NGSSP) for the teaching and non-teaching staff in Government of Gujarat, wherein it is provided that all previous service whether temporary, officiating or permanent in any institution where such service is treated as a qualifying service shall be taken into account and in calculating the length of qualifying service for pension under the scheme that service will be computed. The petitioner on break in such service will not be considered as a qualifying service i.e. actual service rendered in such institution will be considered as qualifying service for the purpose of pension under the scheme. The learned counsel for the petitioner also referred another resolution of Government of Gujarat, Education Department dated 21st December 1979 at Annexure "C" which provides that the present Maharashtra State was a part of old Bombay State. Therefore, those non-governmental secondary school employees were serving prior to 1.5.60 in Old Bombay State and after the bifurcation of Old Bombay State, continued to serve in Maharashtra State and joined non-governmental secondary school in the Gujarat State after 1.5.60, then loss of pay should be considered while

fixing the pay.

3. From the facts and circumstances on record, it appears that the petitioner has not made any representation for re-calculation or for adding qualifying service rendered from 1.5.60 to 12.5.68 rendered by the petitioner at Puna within the State of Maharashtra. Therefore, the petitioner is required to get this matter decided by an appropriate authority i.e. the State Government or any other authority. Accordingly, I think it proper to dispose of this petition with a direction to the parties concerned. The learned counsel for the petitioner states that this petition itself may be treated as a representation of the petitioner and it should be decided by the appropriate authority prescribed therefor.

4. In view of the above, this petition is disposed of finally. However, the respondent State and/or any other appropriate authority is directed to decide the representation of the petitioner in accordance with law, by a speaking order, after taking into account the provisions of Government Resolutions dated 2.10.85 and 21.12.1975 at Annexures "B" and "C" respectively. The respondent is directed to decide the same within a period of three months from the date of receipt of writ of this Court. The authority concerned will communicate its decision to the petitioner within a week from the date of the decision. In case, any adverse order is passed by the authority concerned, the petitioner would be at liberty to file a fresh petition. Rule is discharged within order as to costs. The office is directed to forward the writ of this judgment forthwith.

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